IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :32526 of 1998

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Dated: 22nd November 2007.

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Between:

Kadaveeru Ashok, S/o Narayana, Age 35 years, Occ: Driver, R/o Potharam Village, Usnabad Mandal, Karimnagar District.

..... PETITIONER

AND

The Presiding Officer, Industrial Tribunal-cum-Labour Court, GodavariKhani, Karimnagar District and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.NO.32526 OF 1998

ORAL ORDER:

The petitioner was employed with the State-owned A.P.S.R.T.C., as a driver. While he was performing duties on 02-08-1989, at about 10-30 am, and while bringing to a halt the bus bearing registration No. AAK 8146, at Peddapalli bus station, an accident has occasioned involving an old person, who has sustained a grave injury to his left leg.

It is the case of the petitioner that he had taken all necessary precautions for halting the bus because Peddapally is a fairly busy and crowded bus station, but however, the victim, due to sheer bad luck had slipped at the most crucial moment and consequently, came in contact with the moving bus resulting in his sustaining the injury to his left leg. The victim has been shifted to a nearby hospital, where while receiving treatment, he ultimately succumbed to the injuries. The passengers as well as the conductor, who are on board the bus, when examined, have testified that the petitioner is not at fault for the accident and in very tragic circumstances, the accident had occasioned and that the petitioner was driving the bus using the necessary degree of skill and care. But however, holding him completely accountable for the accident and the resultant death of the pedestrian, he had been inflicted with the punishment of removal from service from 03-05-1990 and that prompted

I.D.No.243 of 1992 to be raised. Upon overall consideration of the material, the Tribunal has no hesitation to come to the conclusion that the petitioner is not wholly responsible for causing the accident involving a pedestrian at the bus station. The Tribunal has also found that there is no material on record to suggest that the petitioner drove the bus in a rash or negligent manner or at a high speed nor was there sufficient material to hold him wholly responsible for causing the accident involving a pedestrian on 02-08-1989 at about 10-15 am. Therefore, exercising the discretion available with it under Section 11A of the Industrial Disputes Act, the Tribunal had *set aside* the order of punishment of removal dated 03-05-1990 and directed the A.P.S.R.T.C.-Management to reinstate the petitioner back into service with continuity of service and denied backwages as well as attendant benefits.

I have heard Sri G.S.Anand the learned counsel for the petitioner as well as Smt. Rajani Reddy the learned Standing Counsel for the A.P.S.R.T.C.

When there is no evidence on record to hold that the petitioner is guilty of causing the accident due to rash and negligent driving of the bus, the punishment that is liable to be imposed for causing the accident involving a pedestrian, should have been absolutely proportionate to the quantum of the misconduct. If the victim had ultimately succumbed to the injuries while receiving treatment at the hospital, it is only reflective of the gravity

of the injuries sustained by the victim. He has not died wholly due to the fault attributable to the petitioner, therefore, the Tribunal is certainly right in coming to the conclusion that the petitioner alone cannot be faulted for causing the accident involving a pedestrian on 02-08-1989 at Peddapally bus station, but at the same time, if the petitioner were to stake a claim for backwages, he ought to have led evidence, as was rightly pointed out by the learned Standing Counsel for the Corporation, to demonstrate that in spite of his best efforts, he could not get re-employment anywhere. The learned Standing Counsel for the Corporation is also right in pointing out that normally, qualified and efficient drivers being in great demand in the private sector, it is improbable that the petitioner has remained un-employed after the date of removal from service by the Corporation.

For the sheer failure of the petitioner to demonstrate that he has not been gainfully employed after the termination of his employment with the A.P.S.R.T.C., the Tribunal could have justifiably denied him the backwages alone, but there is no justification whatsoever to deny the attendant benefits while granting continuity of service. Attendant benefits would enable a complete quantification of the benefit of the past service as well and it would also enable an employee to earn the credit for the past service either by way of pay fixation at a higher slab due to the annual rate of increment and

eligibility to seek promotion to next higher category etc.

I, therefore, modify the award passed by the Tribunal to the extent of denying the petitioner the attendant benefits and direct the respondent-Corporation to accord all the necessary attendant benefits to the petitioner while denying him the backwages for the period he was out of employment from 03-05-1990, i.e., the date of his removal from service till his reinstatement pursuant to the award passed by the Industrial Tribunal.

Accordingly, with this modification, the writ petition is allowed, but however, in the circumstances, there shall be no order as to costs.

Nooty Ramamohana Rao, J

mrk

22nd November 2007.